



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95354; File No. SR-NYSE-2022-32]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rule 7.35B Relating to the Closing Auction and Make Certain Conforming and Non-Substantive Changes to Rule 7.31, Rule 7.35, Rule 7.35B and Rule 104

July 22, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 13, 2022, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction, and (2) make certain conforming and non-substantive changes to Rule 7.31 (Orders and Modifiers), Rule 7.35, Rule 7.35B and Rule 104 (Dealings and Responsibilities of DMMs). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) amend Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction,⁴ and (2) make certain conforming and non-substantive changes to Rule 7.31 (Orders and Modifiers), Rule 7.35, Rule 7.35B and Rule 104 (Dealings and Responsibilities of DMMs).

Overview of Current Closing Auction Process

The following current rules describe the Closing Auction process on the Exchange:

- Rule 7.31 (identifying the order types eligible to participate in an Auction);
- Rule 7.35 (general rules and definitions applicable to Auctions);
- Rule 7.35B (describing the process for DMM-facilitated Closing Auctions);
- Rule 7.35C (describing the process for Exchange-facilitated Auctions); and
- Rule 104 (establishing DMM obligations with respect to Closing Auctions and trading leading into the Closing Auction).

The following interest is eligible to participate in a Closing Auction:

⁴ Capitalized terms used in connection with Auctions on the Exchange are defined in Rule 7.35(a).

- unexecuted buy and sell orders resting on the Exchange Book at the end of Core Trading Hours (including DMM Orders);⁵
- Auction-Only Orders;⁶ and
- DMM Auction Liquidity entered by the DMM in connection with facilitating the Closing Auction.⁷

Beginning 10 minutes before the scheduled end of Core Trading Hours, the Exchange begins disseminating through its proprietary data feed Closing Auction Imbalance Information

⁵ Rule 7.35(a)(9) defines “DMM Interest” for purposes of Auctions to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes the following: (i) “DMM Auction Liquidity,” which is non-displayed buy and sell interest that is designated for an Auction only (see Rule 7.35(a)(9)(A)); (ii) “DMM Orders,” which are orders, as defined under Rule 7.31, entered by a DMM unit (see Rule 7.35(a)(9)(B)); and (iii) “DMM After-Auction Orders,” which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (see Rule 7.35(a)(9)(C)).

⁶ Auction-Only Orders available for the Closing Auction are defined in Rule 7.31(c)(2)(A) - (D) as the Limit-on-Close Order (“LOC Order”), Market-on-Close Order (“MOC Order”), Closing D Order, and Closing Imbalance Offset Order (“Closing IO Order”).

⁷ In 2021, the Commission approved changes to Rule 7.35B providing that Floor Broker Interest is no longer eligible to participate in the Closing Auction. See Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40886 (July 29, 2021) (SR-NYSE-2020-95) (“Floor Broker Interest Approval Order”). The term “Floor Broker Interest” is defined in Rule 7.35(a)(10) to mean orders represented orally by a Floor broker at the point of sale. In light of the Floor Broker Interest Approval Order, the Exchange proposes conforming changes to Rules 7.35B(c)(1)(B), Rule 7.35B(j)(2) and Rule 7.35B(j)(2)(A)(iii). Specifically, Rule 7.35B(c)(1)(B) provides that a DMM may not effect a Closing Auction electronically if, among other things, Floor Broker Interest for the Closing Auction that has been electronically entered or requested to be cancelled has not yet been accepted by the DMM. Rule 7.35B(j)(2) provides that, to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the end of Core Trading Hours, the Exchange may temporarily suspend the requirement to enter all order instructions by the end of Core Trading Hours. Because the Exchange has eliminated Floor Broker Interest at the close, the Exchange proposes to delete Rule 7.35B(c)(1)(B) in its entirety. The remaining subsections of Rule 7.35B(c)(1) would be renumbered accordingly and the Exchange proposes conforming changes to Rule 7.35B(j)(1)(A) and (B) to update the cross references from Rule 7.35B(c)(1)(G) to Rule 7.35B(c)(1)(F). For the same reasons, the Exchange proposes to delete the phrase “or represented to a DMM orally” in Rule 7.35B(j)(2) and the phrase “and Floor Broker Interest” in Rule 7.35B(j)(2)(A)(iii).

that is calculated based on the interest eligible to participate in the Closing Auction.⁸ The Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.⁹ The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.¹⁰ Beginning five minutes before the end of Core Trading Hours, Closing D Orders are included in the Closing Auction Imbalance Information at their undisplayed discretionary price.¹¹ The Closing Auction Imbalance Information is updated at least every second, unless there is no change to the information, and is disseminated until the Closing Auction begins.¹² In addition, if at the Closing Auction Imbalance Freeze Time¹³ the Closing Imbalance¹⁴ is 500 round lots or more, the Exchange will disseminate a Regulatory Closing Imbalance to both the securities information processor and proprietary data feeds.¹⁵

Pursuant to Rule 104(a)(3), Designated Market Makers (“DMM”) have the responsibility to facilitate the close of trading for each of the securities in which the DMM is registered as required by Exchange rules, which may include supplying liquidity as needed. Rule 104(a)(3)

⁸ See Rule 7.35B(e)(1)(A). DMM Orders, as defined in Rule 7.35(d)(9)(B), that have been entered by the DMM in advance of a Closing Auction are currently included in the Closing Auction Imbalance Information.

⁹ See Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

¹⁰ See Rule 7.35B(e)(3).

¹¹ See Rule 7.35(b)(1)(C)(ii).

¹² See Rule 7.35(c)(1) and (2).

¹³ See Rule 7.35(a)(8) (defining the “Closing Auction Imbalance Freeze Time” to be 10 minutes before the scheduled end of Core Trading Hours).

¹⁴ As defined in Rule 7.35(a)(4)(A)(ii), a “Closing Imbalance” means the Imbalance of MOC and LOC Orders to buy and MOC and LOC Orders to sell. That Rule further defines a “Regulatory Closing Imbalance” as a Closing Imbalance disseminated at or after the Closing Auction Imbalance Freeze Time.

¹⁵ See Rule 7.35B(d)(1).

further provides that DMMs and DMM unit algorithms have access to aggregate order information in order to comply with their requirement to facilitate the close of trading for each of the securities in which the DMM is registered. Accordingly, aggregate order information about all orders eligible to participate in the Closing Auction, including the full quantity of Reserve Orders¹⁶ and MOC and LOC Order quantities, are available to DMMs at each price point. This information is available at the point of sale to DMMs. In addition, it is made available to DMM unit algorithms in connection with the electronic message sent to a DMM unit algorithm to close an assigned security electronically, which is sent shortly after the end of Core Trading Hours.

Rule 7.35B specifies the process for DMM-facilitated Closing Auctions. Pursuant to Rule 7.35B(a), it is the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible, while at the same time not unduly hasty, particularly when at a price disparity from the Exchange Last Sale Price.¹⁷ As provided for in Rule 7.35B(a)(2), a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner, and entry of DMM Interest after the end of Core Trading Hours is not subject to Limit Order Price Protection. Pursuant to Rule 7.35B(c), the DMM may effectuate a Closing Auction manually or electronically. Rule 7.35B(g) provides that the DMM is responsible for determining the Auction Price for a Closing Auction and that if there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied.

¹⁶ Reserve Orders, including the non-displayed reserve interest of such orders, are eligible to participate in the Closing Auction. See, e.g., Rule 7.35B(h)(2)(B) (describing the allocation ranking of at-priced orders ranked Priority 3 - Non-Displayed Orders, which refers to the reserve interest of Reserve Orders).

¹⁷ The term "Exchange Last Sale Price" is defined in Rule 7.35(a)(12)(B) to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

Rule 7.35C specifies the process for Exchange-facilitated Auctions if a DMM cannot facilitate an Auction in one or more securities in which the DMM is registered. DMM Interest does not participate in an Exchange-facilitated Closing Auction trade.¹⁸

Proposed Amendments to Rule 7.35B

The Exchange proposes to amend Rule 7.35B to modify how the Closing Auction Price would be determined by adding price parameters within which the DMM must select a Closing Auction Price. As described in more detail below, the proposed pricing parameters would be based on non-DMM interest eligible to participate in the Closing Auction that was included in the last-published Auction Imbalance Information. The Exchange also proposes to modify how the DMM would participate in the Closing Auction by cancelling any resting DMM Orders at the end of Core Trading Hours. The Exchange does not propose to change the DMMs' Rule 104 obligation to facilitate the Closing Auction, including the obligation to supply liquidity as needed. The Exchange believes that the proposed changes would make the Closing Auction more transparent and deterministic while retaining the DMMs' unique obligation to facilitate the Closing Auction.

Proposed Changes to Closing Auction Price

The Exchange proposes to amend Rule 7.35B(g) to add explicit price parameters to the Closing Auction Price. As noted above, the DMM is responsible for determining a Closing Auction Price that is able to satisfy all better-priced orders on the Side of the Imbalance. This requirement would not change. The Exchange proposes to add that the Closing Auction Price determined by the DMM must also be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price. Specifically, the Exchange proposes to amend Rule 7.35B(g) as follows (proposed changes italicized):

¹⁸ See Rule 7.35C(a)(1) ("If the Exchange facilitates an Auction, DMM Interest will not be eligible to participate if such Auction results in a trade, and will be eligible to participate if such Auction results in a quote.").

(g) Determining an Auction Price. The DMM is responsible for determining the Auction Price for a Closing Auction under this Rule.

(1) If there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied.

(2) The Auction Price must be at or between the last-published Imbalance Reference Price and the last-published non-zero Continuous Book Clearing Price.¹⁹

The Exchange believes that adding this proposed Closing Auction Price parameter is consistent with how the Closing Auction Price has been determined for the vast majority of Closing Auctions. For example, in the period January 1, 2021 to June 17, 2022, 95.6% of all Closing Auctions were priced at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price. Similarly, during this same period, 94.6% of closing auction volume priced within these parameters. Moreover, 73.6% of the 4.4% of Closing Auctions that did not price within those parameters closed at prices only one or two cents away from those boundaries.²⁰ More recent Closing Auction data also shows that auctions executing within the proposed range resulted in more representative prices for market participants.²¹ The Exchange

¹⁹ Rule 7.35(a)(4)(C) provides that if there is no Imbalance of all orders eligible to trade in the Auction, the Continuous Book Clearing Price will be the Imbalance Reference Price. The Exchange proposes to amend this provision to clarify that if the Imbalance Reference Price is in an increment smaller than the minimum price variation (“MPV”) for the security (e.g., Exchange Last Sale Price was a midpoint execution in a penny-spread security), it will be rounded to the MPV for the specific security. The Exchange would also make a conforming change to Rule 7.35B(c)(1)(G) (to be renumbered F, see note 6, supra), which provides that a DMM may not effect a Closing Auction electronically if the Closing Auction Price will be more than 10% away from Exchange Last Sale Price. The Exchange would replace Exchange Last Sale Price with last-published Imbalance Reference Price.

²⁰ More specifically, 59.6% were one cent away and 14.0% were two cents away.

²¹ During the last quarter of 2021 and year to date, 95.0% of Closing Auctions occurred within the proposed pricing parameters. These numbers did not materially change for volatile trading days. For example, in the December 2021 quarterly rebalance, 96.5% of Closing Auctions occurred within this range; in the March 2022 quarterly rebalance,

further believes that this proposed change would eliminate any potential for a Closing Auction Price to be lower (higher) than the last-published Imbalance Reference Price in the case of a Buy (Sell) Imbalance. This proposed change would also promote transparency and determinism with respect to the Closing Auction because the Closing Auction Price would be required to be within a pre-determined range of prices that have been disseminated via the Closing Auction Imbalance Information and that cannot be changed after the end of Core Trading Hours.²²

Proposed Changes to How DMMs Would Participate in the Closing Auction

The Exchange proposes to change how DMMs would be able to enter buy and sell interest to participate in the Closing Auction by modifying how a DMM could enter or cancel interest after the end of Core Trading Hours.

Currently, Rule 7.35B(a)(2) provides that a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. Consistent with this current Rule, the Exchange does not systematically block a DMM from entering or cancelling DMM Interest after the end of Core Trading Hours. Instead, the DMM's determination of

95.6% of Closing Auctions occurred within the range. Closing Auctions pricing outside the range were mostly within 2 cents of the range; only 1% of all auctions occurred more than 2 cents outside the range. For instance, in the December 2021 quarterly rebalance, just 0.6% of all Closing Auctions occurred more than 2 cents outside the range; in the more volatile March 2022 rebalance, just 1.2% of Closing Auctions occurred more than 2 cents outside the range. More significantly, Closing Auctions executing within the proposed range during the same period (excluding rebalance days) were 11.3% closer to the consolidated two-minute VWAP price benchmark than Closing Auctions that priced outside of the proposed range, *i.e.*, Closing Auctions executing within the proposed range were more in-line with the range of continuous trading leading into the close. And this was true for rebalance days as well: during the December 2021 rebalance, Closing Auctions executing within the proposed range were 14% closer to the VWAP benchmark; during the March 2022 rebalance, Closing Auctions executing within the proposed range were 40% closer to the VWAP benchmark.

²² The only circumstance when the Continuous Book Clearing Price could change after the end of Core Trading Hours would be if Rule 7.35B(j)(2)(A), described below, were invoked and the requirement to enter all order instructions by the end of Core Trading Hours were temporarily suspended for a security.

whether to enter or cancel DMM Interest after the end of Core Trading Hours is subject to the DMM's obligation to maintain a fair and orderly market, as specified in Rule 104.

The Exchange proposes to amend Rule 7.35B(a)(2) to provide that after the end of Core Trading Hours, a DMM may enter only DMM Auction Liquidity in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. With this proposed change, a DMM could enter DMM Auction Liquidity after the end of Core Trading Hours only to close a security within the proposed new price parameters, described above.²³ Because only DMM Auction Liquidity could be entered after the end of Core Trading Hours, such interest could be entered either electronically in response to the electronic message sent to a DMM unit algorithm to close an assigned security or manually.

The Exchange proposes that DMM Orders (i.e., DMM buy and sell orders resting on the Exchange Book) would not be eligible to participate in the Closing Auction.²⁴ Because DMM Orders would not participate in the Closing Auction, the Exchange further proposes that such interest would not be included in the calculation of the Continuous Book Clearing Price. With this change, the Continuous Book Clearing Price would be based on non-DMM interest eligible to participate in the Closing Auction. Finally, because resting DMM Orders would not participate in the Closing Auction, the Exchange also proposes to cancel DMM Orders at the end

²³ For example, if there is an Imbalance to buy, the Imbalance Reference Price is \$10.00, and the Continuous Book Clearing Price is \$10.10, the DMM could enter DMM Auction Liquidity to sell only at prices ranging from \$10.00 to \$10.10. The Exchange does not propose to systematically prescribe whether such interest must be offsetting to the last-published Imbalance because DMM same-side interest could result in more orders participating in the Closing Auction. For example, DMM Auction Liquidity entered on the same side of the Imbalance could result in greater liquidity being supplied by the DMM to trade with at-priced orders, which are not included in the calculation of the Imbalance. In such a scenario, even though the DMM may be participating on the same-side of the imbalance, such interest would not move the Closing Price outside the Continuous Book Clearing Price.

²⁴ The Exchange also proposes to amend Rule 7.35B(j)(2)(A)(iii) to provide that DMM Orders would be rejected if entered after the end of Core Trading Hours (i.e., during the "Solicitation Period") to offset an extreme order imbalance at or near the close.

of Core Trading Hours.²⁵ The Exchange proposes a related amendment to delete the phrase “or cancel” in the first sentence of Rule 7.35B(a)(2) as moot.

To effect these changes, the Exchange proposes to amend Rule 7.35B(a)(2) as follows (proposed additions italicized, proposed deletions bracketed):

(2) DMM Interest: A DMM may enter [or cancel] DMM Auction Liquidity[Interest] after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM’s obligation to facilitate the Closing Auction in a fair and orderly manner. The entry of DMM Auction Liquidity[Interest] after the end of Core Trading Hours will not be subject to Limit Order Price Protection. DMM Orders will not be eligible to participate in the Closing Auction, will not be included in the calculation of the Continuous Book Clearing Price for the Closing Auction, and will be cancelled at the end of Core Trading Hours.

With this proposed change to Rule 7.35B(a)(2), in connection with the Closing Auction, DMMs would still be required consistent with their obligations under Rule 104 to contribute their own capital to supply liquidity as needed to assist in the maintenance of a fair and orderly market. In addition, DMMs would continue to have an obligation with respect to determining a Closing Auction Price that satisfies all better-priced orders on the Side of the Imbalance.

Proposed Conforming and Non-Substantive Amendments

The Exchange proposes to amend Rule 104 to eliminate obsolete rule text and update rule references, and make other conforming changes to Rule 7.31 and Rule 104. The following proposed changes would not result in any substantive changes to DMM obligations:

- The Exchange proposes to amend Rule 104(a)(2) to update the cross reference from Rule 123D to Rule 7.35A and to use the Pillar terms of “Core Open

²⁵ The Exchange understands that it is current practice for DMMs to cancel their DMM Orders at the end of Core Trading Hours.

Auctions and Trading Halt Auctions” instead of referring to “openings.” The Exchange also proposes to delete the reference to Rule 13 and Reserve Order interest procedures at the opening as obsolete. Finally, the Exchange proposes to delete the reference to Supplementary Material .05 to Rule 104 with respect to odd-lot order information to the DMM unit algorithm, as this is also obsolete now that the Exchange trades on Pillar.

- The Exchange proposes to amend Rule 104(a)(3) to update the cross reference from Rule 123C to Rule 7.35B and to use the Pillar term of “Closing Auctions” instead of “closes.” The Exchange also proposes to delete the reference to Rule 13 and Reserve Order interest procedures at the close as obsolete.
- The Exchange proposes to amend Rule 104(b) by deleting subparagraphs (2) and (6) and replacing the text for Rule 104(b)(2) with the following: “Unless otherwise specified in Rule 7.31, DMM unit algorithms may use the orders and modifiers set forth in Rule 7.31.”

Rule 104(b)(2) currently provides that “Exchange systems shall enforce the proper sequencing of incoming orders and algorithmically-generated messages and will prevent incoming DMM interest from trading with resting DMM interest. If the incoming DMM interest would trade with resting DMM interest only, the incoming DMM interest will be cancelled. If the incoming DMM interest would trade with interest other than DMM interest, the resting DMM interest will be cancelled.” Since the Exchange transitioned to Pillar, the Exchange no longer enforces self-trade prevention on behalf of DMMs. Instead, DMMs may use one of the Self-Trade Prevention Modifiers (“STP”) described in Rule 7.31(i)(2).

Rule 104(b)(6) currently provides that “DMM Units may not enter the following orders and modifiers: Market Orders, Inside Limit Orders, MOO Orders, CO

Orders, MOC Orders, LOC Orders, or Last Sale Peg Orders.”

In the Pillar rules, Rule 7.31 sets forth which orders and modifiers are not available to DMMs, and therefore Rule 104(b)(6) is obsolete. All of the orders and modifiers set forth in Rule 104(b)(6) that are unavailable to DMMs are reflected in Rule 7.31 except for Inside Limit Orders, which limitation was only added to Rule 104(b)(6).²⁶ The Exchange accordingly proposes to amend Rule 7.31(a)(3) to reflect that Inside Limit Orders are not available to DMMs. The Exchange believes that the proposed new text for Rule 104(b)(2) would provide transparency that Rule 7.31 would describe which orders and modifiers would be available to DMMs, including STP modifiers.

- The Exchange proposes to amend Rule 104(b)(3) to delete references to “Floor broker agency interest files or reserve interest” as such references are now obsolete. The Exchange no longer uses “Floor broker agency interest files” and no longer provides Floor brokers with reserve interest functionality that differs from the Reserve Orders available to all member organizations, as described in Rule 7.31.
- The Exchange proposes to amend Rule 104(b) by deleting subparagraph (4), which provides that “[t]he DMM unit’s algorithm may place within Exchange systems trading interest to be known as a “Capital Commitment Schedule”. (See Rule 1000 concerning the operation of the Capital Commitment Schedule).” With the transition to Pillar, the Exchange has replaced the “Capital Commitment Schedule” with Capital Commitment Orders, as described in Rule 7.31(d)(5), and has deleted Rule 1000. Accordingly, this current rule is obsolete. The Exchange

²⁶ See Securities Exchange Act Release No. 94030 (January 24, 2022), 87 FR 4695, 4696 (January 28, 2022) (SR-NYSE-2022-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.31 To Provide for Inside Limit Orders and Make Other Conforming Changes).

proposes a non-substantive amendment to renumber Rule 104(b)(5) as Rule 104(b)(4).

- The Exchange proposes to delete the text accompanying current Rules 104(c), (d), and (e) as obsolete now that the Exchange trades on Pillar.

Rule 104(c) currently provides: “A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.” Rule 7.31 now describes how Reserve Orders function.

Rule 104(d) currently provides: “A DMM unit may provide algorithmically-generated price improvement to all or part of an incoming order that can be executed at or within the Exchange BBO through the use of Capital Commitment Schedule interest (see Rule 1000). Any orders eligible for execution in Exchange systems at the price of the DMM unit’s interest will trade on parity with such interest, as will any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit’s interest.” As noted above, with Pillar, the Exchange has deleted Rule 1000 and no longer offers the Capital Commitment Schedule to DMMs.

Rule 104(e) currently provides: “DMM units shall provide contra side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening and closing transactions but remain unpaired after the DMM has paired all other eligible round lot sized interest.” This requirement is obsolete.

With these proposed deletions, the Exchange proposes non-substantive amendments to renumber Rules 104(f), (g), (h), (i), and (j) as Rules 104(c), (d), (e), (f), and (g) and update cross-references in proposed Rule 104(e)(iii) from subparagraph (h)(ii) and (iii) to (e)(ii) and (iii).

- The Exchange proposes to amend current Rule 104(h)(ii) (proposed Rule 104(e)(ii)) to delete reference to information that is no longer available to a DMM at the post. Specifically, the Exchange no longer provides DMMs at the post with the following information: “the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display shall exclude any order or portion thereof that a market participant has elected not to display to a DMM.” Accordingly, the Exchange proposes to amend Rule 104(e)(ii) to delete that rule text.

The Exchange proposes that the non-substantive amendments to Rule 104 would be operative immediately upon approval of this proposed rule change. Because of the technology changes associated with the proposed changes to Rule 7.35B, the Exchange proposes that, subject to approval of the proposed rule change, the Exchange will announce the implementation date of the remaining proposed rule changes by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that such changes will be implemented in the fourth quarter of 2022.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Sections 6(b)(5) of the Act,²⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Proposed Changes to Closing Auction Price. The Exchange believes that the proposed amendment to Rule 7.35B(g) regarding how the Closing Auction Price would be determined would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote a more transparent and deterministic Closing Auction process and support the maintenance of a fair and orderly market. Specifically, the proposed change would require that the DMM determine a Closing Auction Price that is at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price.²⁹ Accordingly, the Closing Auction Price must be within a pre-determined range of prices that would have been disseminated via the Closing Auction Imbalance Information and that cannot be changed by the DMM after the end of Core Trading Hours. The Exchange further believes that this proposed parameter is consistent with how Closing Auction Prices have been determined for the vast majority of Closing Auctions. For example, as noted above, in the period January 1, 2021 to December 31, 2021, 95.8% of all Closing Auctions were priced at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price. Similarly, during this same period, 94.6% of closing auction volume priced within these parameters. Moreover, 74% of the 4.2% of Closing Auctions that did not price within those parameters closed at prices only one or two cents away from those boundaries.³⁰ More recent Closing Auction data also shows that Closing Auctions executing within the proposed range resulted in more representative prices for market participants.³¹

²⁹ The DMM's determination of the precise Closing Auction Price within the proposed range would remain subject to the DMM's obligation to maintain a fair and orderly market as specified in Rule 104.

³⁰ More specifically, as noted, 55.9% were one cent away and 14.2% were two cents away.

³¹ See note 21, supra.

Proposed Changes to How DMMs Would Participate in the Closing Auction. The Exchange believes that the proposed amendments to Rule 7.35B(a)(2) relating to how DMMs would participate in the Closing Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because with these changes, the price range at which a security could close would be based on non-DMM interest eligible to participate in the Closing Auction. The proposed change would continue to provide DMMs with tools to comply with their Rule 104(a)(3) obligation to supply liquidity as needed to facilitate a fair and orderly Closing Auction. Specifically, in order to supply liquidity as needed to facilitate the Closing Auction, DMMs could enter DMM Auction Liquidity after the end of Core Trading Hours either in response to the electronic message sent by the Exchange to close a security or manually. In addition, by cancelling resting DMM Orders, only non-DMM interest eligible to participate in the Closing Auction would be considered in the calculation of the Continuous Book Clearing Price. The Exchange believes that these changes, together with the proposed pricing parameters for determining the Closing Auction Price, would eliminate the potential for a Closing Auction to be priced outside of the last-published imbalance information, and therefore promote transparency and determinism in the Closing Auction process and support the maintenance of a fair and orderly market.

Proposed Non-Substantive Amendments. The Exchange believes that the proposed non-substantive amendments to Rules 7.31, 7.35, 7.35B and 104 would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to eliminate obsolete rule text, update rule references to reflect Pillar functionality, and make other conforming changes. Specifically, the Exchange proposes to eliminate references to pre-Pillar Rules and trading functionality, including references to Rules 123D, 123C, Rule 1000, the Capital Commitment Schedule, Floor broker agency interest files, odd-lot orders in the close, and self-trade prevention. The Exchange also proposes to update Rule 104(b) to cross reference Rule 7.31 to determine which orders and modifiers are available to

DMMs, rather than separately (and duplicatively) including this description in Rule 104. The Exchange also proposes to update current Rule 104(h)(ii) (proposed Rule 104(e)(ii)) to delete reference to information that is no longer available to DMMs at the post. The Exchange believes that these proposed amendments will promote transparency and clarity in Exchange rules regarding how DMMs function on the Exchange, including what information is available to them at the post. The Exchange also proposes to modify Rule 7.35(a)(4)(C), which provides that the Continuous Book Clearing Price will be the Imbalance Reference Price if there is no Imbalance of all orders eligible to trade in the Auction, to clarify that the Imbalance Reference Price would be rounded to the MPV for the specific security if it is in an increment smaller than the MPV for such security. The Exchange believes this proposed change would add clarity to Exchange rules regarding the determination of the Continuous Book Clearing Price, in connection with the proposed changes to Rule 7.35B(g) regarding how the Closing Auction Price would be determined.

Finally, the Exchange believes that the proposed non-substantive amendments to Rules 7.35B(c)(1)(D), 7.35B(j)(2) and 7.35B(j)(2)(A)(iii) to eliminate references to Floor broker interest and oral interest entered by Floor brokers at the close would remove impediments to and perfect the mechanism of a free and open market and a national market system because these proposed changes are designed to conform Exchange rules to the changes described in the Floor Broker Interest Approval Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,³² the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to revise the Closing Auction process on the Exchange to make it more transparent and deterministic, while still

³² 15 U.S.C. 78f(b)(8).

retaining the DMM market model. The Exchange believes that the proposed rule change would promote intermarket competition, particularly for issuers in connection with their determination of which exchange to select as a primary listing exchange. The Exchange does not believe that the proposed rule change would impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because they are designed to address the DMM's unique role at the Exchange, including the DMM's Rule 104(a)(3) obligation to facilitate the Closing Auction by supplying liquidity as needed for a fair and orderly Closing Auction. The proposed changes are designed to make the process more transparent and deterministic.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-32 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2022-32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSE-2022-32 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,

Deputy Secretary.

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³³ 17 CFR 200.30-3(a)(12).